

**Remarks**

The Application has been reviewed in light of the Official Action of February 16, 2010. Claims 25-38, 40-48, and 50 are pending in the Application. By the foregoing Amendment, Claims 25 and 50 are amended and Claim 52 is newly added. Entry of the Amendment, and favorable consideration thereof, is earnestly requested.

The Examiner has rejected Claims 25-38, 40-48 and 50 under 35 U.S.C. 112, first paragraph, with respect to the limitation of a “digestive tract condition.” Claims 25 and 50 have been amended to recite the limitation of “digestive tract disease” in paragraph [0093]. Accordingly all the dependent claims, Claims 26-38 and 40-48, have overcome the rejection.

The Examiner has rejected Claims 25-38 and 40-48 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement because the Examiner believes the limitation of “less than about 100” was not described in the specification as filed. Additionally, these claims are rejected under 35 U.S.C. 112, second paragraph, as being indefinite, for describing a value with a static phrase “less than” and a dynamic word “about” simultaneously. Claim 25 has been amended to address both rejections. Claim 25 now contains the limitation of “between about 95% and less than 100%.” The limitation is supported, *inter alia*, in paragraphs [0015] and [0024], where it requires “between about 95% and about 100% by weight of whey powder.” Since “be-

tween about 95% and about 100%” necessarily includes the range “between about 95% and less than 100%,” the amended limitation of Claim 25 is supported by the specification and also definite. Therefore, all the dependent claims, Claims 26-38 and 40-48, have overcome both rejections.

The Examiner has rejected Claim 50 under 35 U.S.C. 102(b) as being anticipated by Lewis, Lon (Feeding and Care of the Horse second edition; 1995, Blackwell Publishing Professional, Ames, Iowa). (Referred to herein as “Lewis 2005.”) The Examiner appears to have provided the Applicant with portions of this reference obtained from Google Books. However, the bibliographic page accompanying the Examiner’s excerpts has a copyright date of 2005. As a result, this publication is not prior art and thus does not anticipate Claim 50.

Moreover, Lewis 2005 does not anticipate Claim 50 because it does not recite each and every limitation of Claim 50. Lewis 2005 does not teach a method for treating animals suffering from liver disease with a diet that contains no fat, which would anticipate Claim 50 since “[a] composition with no fat is less than 3% fat.” See the Office Action, page 5, last paragraph. Instead, Lewis 2005 only suggests the diet “be low in, or at least not contain added, fat.” (Emphasis added.) See Lewis 2005, page 296, left column. Therefore, Claim 50 is not anticipated at least because Lewis 2005 does not disclose a limitation of the diet composition having less than 3% fat.

The Examiner has rejected claims 25-38, 40-48 and 50 under 35 U.S.C. 103, as being obvious over Lewis 2005, Lewis, Lon (Equine Clinical Nutrition Feeding and Care; 1995, Williams & Wilkins, Media, Pa) (Referred to herein as "Lewis 1995"), Parsons, HS., (Care and Management of the Older Horse; 2001, Trafalgar Square Publishing, North Pomfret, Vermont), and Weese et al. (Abstract; J. Am. Vet. Med. Assoc. 1999, 214(2), 229-32). For the same reason as stated above, the Applicant respectfully submits that Lewis 2005 is not a prior art to the Application. As a result, these references do not render the claims 25-38, 40-48 and 50 obvious. Furthermore, Lewis 2005 in combination with the other references, does not render Claim 25 and 50 obvious.

While Lewis 2005 discloses a method for treating horses with liver disease with a low fat diet, it does not teach the diet composition having less than 3% fat, nor does it teach the composition contains between about 1% to about 5% by weight of lactase. Additionally, the fact that common horses feeds containing 2% to 6% fat, as disclosed in Lewis 2005, does not teach or suggest the specific feeds for energy deficit horses due to hepatic dysfunction, renal dysfunction, or digestive tract disease.

Lewis 1995 and Parsons also do not teach the method using a diet composition having less than 3% fat and between about 1% to about 5% by weight of lactase.

While Weese et al. teaches the concept of administration of lactase to lactose intolerant equines, it does not teach the method of mixing the lactase into the feeds, such as whey powder.

The Examiner maintains that it would be obvious to combine Lewis 2005, which teaches high lactose whey, with Wesse et al., which teaches oral administration of lactase to lactose intolerant equines, to arrive at Claim 25. However, this is an impermissible hindsight. The objective of Lewis 2005 is to provide adequate dietary energy intake for animals with decreased liver function in order to alleviate or prevent side effects associated with insufficient food intake. See page 296, left column. Lewis 2005 sets four criteria for the diet. See page 296, left column. The objective of Wesse is to treat C difficile associated lactose intolerance and it discovers a sequential administration of metronidazole and lactase for better treatment of the symptoms. Since the two references have divergent objectives and each has achieved the objective with distinct means, there is no suggestion or motivation for a person skilled in the art to combine the two arts.

Claim 50 is not obvious under 35 U.S.C. 103 because none of the prior art references teaches or suggests a method of treating an energy deficient mammal with a diet consisting an energy promoting composition with less than 3% fat.

The newly added Claim 52 recites the limitation of Claim 25 and does not introduce new matter.

In short, Applicant respectfully submits that Claims 25 and 50 are not obvious in view of the prior art references. Accordingly, Claims 26-38 and 40-48, which depend on Claim 25, and Claim 52, which depends on claim 50, are patentable.

Respectfully submitted,

August 16, 2010

/Wesley W. Whitmyer, Jr./

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Wesley W. Whitmyer, Jr., Registration No. 33,558  
Christopher H. Strate, Registration No. 57,376  
Attorneys for Applicants  
ST.ONGE STEWARD JOHNSTON & REENS LLC  
986 Bedford Street  
Stamford, CT 06905-5619  
Tel. 203 324-6155